(3)

Supreme Court, U.S.
FILED
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No. 99-152

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1999

EARLENE POLYAK — Petitioner

v

THE HONORABLE CHARLES BURSON; FRANK HULEN ESTATE; DORA LEE HULEN; WILMA LESNANSKY; THE HONORABLE JIM HAMILTON,CIRCUIT AND CHANCERY JUDGE; GERALD WILSON, CIRCUIT COURT CLERK; DALTON MOUNGER; AND GENEVA FRISBEE, CLERK AND MASTER — Respondents

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On Petition for Writ of Certiorari
To the United States Court of Appeals
And the United States District Court
For the Sixth Circuit

REPLY BRIEF TO RESPONDENTS GERALD WILSON AND GENEVA FRISBEE'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1.SHOULD THIS SUPREME COURT SET ASIDE COURT OF APPEALS SIXTH CIRCUIT INJUNCTION DENYING APPELLATE REVIEW OF DISMISSALS OF THE DISTRICT COURT DENYING CONSTITUTIONAL RIGHT OF JURY TRIAL ON RES JUDICATA?

2. SHOULD THIS SUPREME COURT SET ASIDE COURT OF APPEALS INJUNCTION DENYING APPELLATE REVIEW OF DISMISSALS OF THE DISTRICT COURT DENYING FEDERAL JURISDICTION CONFLICTING WITH SUPREME COURT RULING,FEDERAL JURISDICTIONS OF ACTIONS GOVERNED BY THE U.S. CONSTITUTION AND ACTS OF CONGRESS,OVER STATE FOR JURY TRIAL, IN ERIE V TOMPKINS?

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STATEMENT OF THE CASE

Petitioner replies to misrepresentations of the case and facts for Respondents Gerald Wilson, Circuit Court Clerk and Geneva Frisbee by their counsel in brief in opposition and the same representations used by Magistrate Judge William J. Hayes used for res judicata the second time in the United States District Court.

The misrepresentations of cases and facts are as follows: (1) On May 10, 1996, Dalton Mounger counsel for Respondents Dora Lee Hulen and Wilma Lesnansky filed Third Complaint,to sell this Petitioner's constitutional rights and investments without constitutional right of jury trial at public auction Chancery No. 7951-96 in Lawrence County, Tennessee.

(2) This Complaint No. 7951-96 was removed and counter claimed for jury trial in the United States District Court No. 1:96-0112, under Article III Sec.2, Diversity of Citizenship, place of action and amount,which qualified action in federal court.

(3) Case No. 1:96-0112 was dismissed and remanded, but Petitioner immediately submitted Notice of Appeal Rule 3, FrcivP with required captioned Application Pursuant to Court Order Seeking Leave to File to the Court of Appeals Sixth Circuit (97-508)

(4) Petitioner's motions for status reports and briefing schedule were not granted but Appeal No. 97-508 was filed on January 17, 1997.

(5) The Court of Appeals Sixth Circuit held appeal from January 17, 1997, until the following March 12, 1998,with federal jurisdiction No.97-508)(Br.App.A.p.10).

(6) But on January 30, 1998, Dalton Mounger submitted motion for hearing February 10, 1998, without serving Petitioner and the Honorable Jim Hamilton held hearing February 10, 1998 without notification to Petitioner and without her presence.

(7) Judge Hamilton dismissed counterclaim 7951-96; issued Judgment on the Pleadings 7951-96; and issued Order for Sale 7951-96,

and dismissed Circuit Court No.CC:452-98 (Probate No.10496 Dora Lee Hulen's Exceptions to claim for jury trial for just compensation for Petitioner's restoration and investment in said property).

(8) Petitioner submitted Complaint and Jury Trial Demand for express permission of District Court No. 1:98-0026 filed on February 12, 1998.

(9) Petitioner named parties the Honorable Charles Burson; Frank Hulen Estate,Dora Lee Hulen, and Wilma Lesnansky No.1:98-0026.

(10)Petitioner amended Complaint and Jury Trial Demand to add orders and parties,the Honorable Jim Hamilton, Circuit and Chancery Judge; Gerald Wilson, Circuit Court Clerk; Dalton Mounger; and Geneva Frisbee, Clerk & Master on February 24, 1998 No. 1:98-0026.

(11)The District Court dismissed 1:98-0026 on March 4, 1999, but did not remand to Lawrence County Court.

(12) Again, Petitioner submitted Notice of Appeal to Court of Appeals Sixth Circuit

captioned Application Pursuant to Court Order Seeking Leave to File filed dismissal on March 4, 1998, delayed filing in the District Court until March 30, 1998,Court of Appeals Sixth Circuit No.99-0509 (1:98-0026)

(13) Court of Appeals 99-0509 denied application on June 23, 1999, on Buford Evans & Sons 92-5240(See Opp.Br.App. C).(App.A.p.2).

(14) But Petitioner has Petitioned for Rehearing 99-0509 filed on June 22, 1999 to Court of Appeals Sixth Circuit(App.A.p.3).

(14).The Court of Appeals of Tennessee Reversed and Remanded Chancey No. 7951-96 on April 30, 1999 on error that there is no final Order in Tennessee Courts, and no res judicata(BR.App.C.p.54).

(15)Petition for Rehearing to set aside order denying appeal 99-0509 (1:98-0026) for Appellate review still pending under federal jurisdiction in Court of Appeals Sixth Circuit as of this date September 7, 1999.

ARGUMENT

Petitioner should not be denied Writ of Certiorari on learned counsel's allegations and misrepresentations of the case and facts, as she has always qualified that she does not have any knowledge or expertise in the legal profession, but she believes that the Courts were created in the Constitution for the relief of the people.

Three Honorable Judges of the Court of Appeals of Tennessee have reversed and remanded on the Honorable Jim Hamiton's error in the dismissals on res judicata, and ruled that there is no final order in Tennessee Courts, and there is no res judicata(BR.App. C.p.54).

Petitioner has set forth in No.99-152 the dismissal of Complaints denying Constitutional right of jury trial, and denial of all appeals by the Court of Appeals Sixth Circuit meeting Rule 10 Rule of the Rules of the Supreme Court of the United States, that the Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings,and has

sanctioned such a departure by the District Court Nashville, Tennessee, to call for an exercise of this Court's supervisory power.

1. THE COURT OF APPEALS SIXTH CIRCUIT HAS DENIED APPELLATE REVIEW OF THE DISTRICT COURT DISMISSALS ON RES JUDICATA AND INJUNCTION IS UNCONSTITUTIONAL AND ONLY THIS COURT'S SUPERVISORY CAN SET ASIDE

The Court of Appeals Sixth Circuit has denied all appeals of the District Court dismissals on res judicata without constitutional right of jury trial, and issued injunction,and injunction is unconstitutional and calls for this Court's supervisory power to set aside violation of First Amendment to U.S. Constitution in No. 92-5420 Buford Evans & Sons.

> The right to petition for redress of grievances is guaranteed by the First Amendment of U.S. Constitution.Black's Law, Copyright 1991 West Publishing Company.

The Sixth Circuit denies Appellate review of District Court dismissal of Circuit Court Clerk's obstructing First Amendment right to peacefully travel from Florida in Lawrence County on March 13, 1998 No.99-0502 and 99-0509(D.C. 1:98-0026),petition for rehearing

on the doctrine of res judicata.

The Sixth Circuit denies Appellate review the District Court's dismissal of right to redress Circuit Court Clerk's forced payment of Buford Evans & Sons Illegal and invalid lein on individual property transferred to automobile without notification on res judicata No. 99-502,99-509 (1:98-0026).

The Sixth Circuit denied Appellate review of District Court's dismissal of right to redress Dalton Mounger's legal malpractice and awarded attoney fees adverse to Petitioner on res judicata.

The Sixth Circuit denied Appellate review of District Court's dismissal without constitutional right of any just compensation in violation of the Fifth Amendment to the U.S. Constitution on res judicata.

The Sixth Circuit denied Appellate review of the District Court's dismissal of constitutional right to jury trial in vilation of the Seventh Amendment on res judicata.

The Sixth Circuit denied Appellate review of District Court's dismissals of constitutional right of jury trial and equal treatment pursuant to the Fourteenth Amendment under Partition in Kind 29-27-117 TCA.

> If the commissioners are not satisfied that exact partitions cannot be made without material injury to the parties or some one of them, they may make the partitions as nearly equal as they can, and charge the larger shares with the sums necessary to equalize all shares.

The Sixth Circuit denied Appellate review of app eals of dismissals by District Court on res judicata without constitutional right of jury trial, relief in damages, or any just compensation,and without equal treat ment under the U.S. Constitution, and has so sanctioned these dismissals to call for an exercise in this Court's supervisory power.

2. <u>THE COURT OF APPEALS SIXTH CIRCUIT HAS DENIED APPELLATE REVIEW OF THE DISTRICT COURT DISMISSALS IN JURISDICTION WHICH CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT AND CALLS FOR SUPERVISORY POWER FOR SET ASIDE FOR JURY TRIAL</u>

The Sixth Circuit dismissals of District Court constitutional right of jury

trial and denial of all complaints for relief under constitutional provisions in bias for state courts is in conflict with this Supreme Court ruling in Erie Railroad v Tompkin as ruling states ...except for the U.S. Constition and Acts of comgress, 304 U.S. 46 58 S Ct 817 L Ed 118. And

> Erie Railroad v Tompkin requires federal Court to give some remedies in divdrsity case, the only qualification is that federal Court have power to grant relief. Erie Railroad v Tompkin,Moores K.F.8716. 5 M 661.

The Magistrate Judge misrepresents the fact that 1:98-002 was original action in the District Court February 12, 1998, and was amended to remove orders and parties from Chancery 7951-96 on February 24, 1998, The District Court dismissed 1:98-0026, but did not remand case to state court, and 1:98-0026 is on appeal in the Court of Appeals 99-0509.This Petitioner has filed Notice of Appeal to dismissal on March 4, 1999 with $105.00 and Notice of Appeal to awarded sanction of pro se to Def.Mounger, with second $105.00 and

both appeals have been timely and properly submitted to the Court of Appeals Sixth Circuit 99-0509. This denial on June 21, 1999 has been Petitioned For Rehearing filed on June 28, 1999.

CONCLUSION

Petitioner prays that a writ of Certiorari issue from this Honorable Court to review the Sixth Circuit departure from accepted and usual judicial proceedings in denial of District Court dismissals on res judicata, and sanctioned the dismissals to call for an exercise of this court's power to set aside injunction for constitutional right of jury trial for relief in damages, and any other such relief this Court deems fair and just.

On the 9th day of September, 1999

Respectfully submitted,

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APPENDIX A

In the Court of Appeals Sixth Circuit Earlene Polyak v The Honorable Charles Burson et al., No.99-0509.

Denied: Notice of Appeal June 21, 1999

Petition for Rehearing filed June 28, 1999,and pending as of September 9 , 1999.

Before: Boggs, Norris, Batchelder, Circuit Court Judges.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

FILED JUN 22 1999

Appellant/Petitioner

v No. 99-0509

THE HONORABLE CHARLES BURSON
et al.,

PETITION FOR REHEARING
AND SET ASIDE OF ALL ORDERS PURSUANT TO RULE 60(b) FRcivP

Application pursuant to Court order Seeking Leave to File with attached Injunction as Demanded by the Sixth Circuit Sanctions.

Appellant petitions for rehearing of the denial of application 99-0509 and any other denials, and all denials in old District Court appeals pursuant to Rule 60(FRAUD(whether intrinsic or extrinsic) and misrepresentation by adverse parties pursuant FRcivP. This petition for rehearing is submitted after receipt of denial on June 21, 1999,on Saturday June 26, 1999 by Express mail.

Appellant has no way of determning what is denied but Second Notice Notice of Appeal to the award of Dalton Mounger's frivolous

attorney fees for the misrepresentation of fees for his own defense to Legal Malpractice as to Frank Hulen Estate, Dora Lee Hulen and wilma Lesnansky to Magistrate Judge. He already submitted $5000.00 charges to the Chancery Court of lawrence County for the same service. Appellant paid District Court $105.00 and a copy to this Court $100.00. 28 U.S.C. 636(c)(3) and FRcivP 73(c).

Appellant petitions for rehearing and set aside of old biased orders to local parties and prejudice to non-resident pursuant to New Evidence of Court of Appeals (Tennessee) three Judges Opinion THERE IS NO RES JUDICATA as Sixth Circuit affirmed all District court Orders on Res Judicata in error.And Reversed and Remanded the Honorable Jim Hamilton's Chancery Judgment 7951-96; Dismissal of Counter-claim, on appeal in the Sixth Circuit 97-508 when Dalton Mounger scheduled hearing on January 30, 1998, for February 10,(1998) without due process of notification to Appellant and Judge held

hearing without Appellant's presence and issued four orders including 7951-96 Dismissal of Counter-claim(pending in the Sixth Circuit appeal) (951-96 Judgment on the Pleadings; 7951-96 Order for Sale, and Circuit Court CC: 452-98(Probate 10496 Exceptions by Dora Lee Hulen to Earlene Polyak's Claim for just compensation for restoration and investment in Rena Hulen Estate. Dora Lee hulen is not a legal heir and lost any right on November 19, 1945.

Dalton Mounger's initial Third Complaint to sell property at public auction 7951-96 was Counter-claimed 96-0112, and when District Court remanded while counter-claim pending in this Court from January 17, 1997, over one (1) year, denied on March 12, 1998,when Dalton Mounger's advertised sale of property on March 14, 1998 at public auction

But the above orders 7951 Dismissal of Counterclaim; Judgment on the Pleadings, order for Sale and CC: 452-98 were removed pursuant to 28 U.S.C. 1441, and Diversity of Citizen-

ship and 28 U.S.C. 1223 February 12, 1998, when District Court No. 1:98-0026(amemded to add cases and parties).

The reversal and remand by Court of Appeals of Tennessee of orders pending in the District court and on appeal to this Court of Appeals with all costs $105.00, $100.00, $105.00 $100.00.

The District court(Magistrate) opinion fails to state second removal page 4, before fifth paragraph beginning with (In meantime).

The Court of Appeals (Tennessee) mentions that Appellant's state and federal Court sought after justice denied (state)"she set out on a journey through federal courts, seeking to enjoin the sale of property and to recover damages for a"HOST OF CIVIL RIGHTS VIOLATIONS".

The Court of Appeals (Tennessee) we found evidence that mrs Polyak attempted to appeal a 1983 decision and appeal was dismissed for LACK OF A FINAL ORDER.

Appellant has stated to the U.S. District

that there is no final order in Tennessee Courts, and there is no res judicata, but Court of Appeals continues to deny all appeals on final order in Tennessee, and 7951-96 dismissal of counterclaim pending in appeal 98-5086 1:96-0112.

Appellant petitions for a rehearing and set aside of all orders Rule 60(b) FRcivP, and issue a briefing schedule to appeals 1:98-0026 back to the District court for Jury Trial for damages before an unbiased Court.

I certify that a true copy of this pleading has been mailde to all parties, or their representatives on the 25th day of June, 999.

Respectfully submitted,

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No. 99-0509

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED JUN 21 1999

Petitioner-Plaintiff

v ORDER

CHARLES BURSON et al.,

Respondents-Defendants

Before: BOGGS, NORRIS, and BATCHELDER, Circuit Judges.

Earlene Polyak applies for leave to file pursuant to this court's order entered in Buford Evans & Sons v Polyak No. 92-5240 1992 WL 301959(6th Cir Oct 20 1992)(order)

Upon review, the application is hereby denied.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green j

A TRUE COPY
Attest
By Yvonne Henderson
Deputy Clerk

6-23-99

App. C
(Copied from Respondent's Brief